

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Corporation Franchise Tax Allocation of Taxable Capital (LAC 61:I.306)

Under the authority of R.S. 47:606(A)(1)(e), R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.306 relative to attribution of revenue from telephone, telecommunications, and other similar services.

Louisiana Revised Statute 47:606(A)(1)(e) states that "Revenues from services...shall be attributed within and without Louisiana on the basis of the location at which the services are rendered." By amending LAC 61:I.306, the Department of Revenue will provide specific guidance to telephone, telecommunications, and other similar services, concerning revenue to be included in the numerator of the revenue ratio.

#### Title 61

#### REVENUE AND TAXATION

##### Part I. Taxes Collected and Administered by the Secretary of Revenue

##### Chapter 3. Corporation Franchise Tax §306. Allocation of Taxable Capital

A. – A.1.d.vi. ...

e. Revenue from Services Other Than from Transportation

i. For purposes of this Subsection, in addition to any other revenue attributed to Louisiana, the following revenue from providing telephone, telecommunications, and similar services shall be attributed to Louisiana:

(a). revenue derived from charges for providing telephone "access" from a location in this state. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to a service address located in the state and without regard to actual usage;

(b). revenue derived from charges for unlimited calling privileges, if the charges are billed by reference to a service address located in this state;

(c). revenue from intrastate telephone calls or other telecommunications, except for mobile telecommunication services, beginning and ending in Louisiana;

(d). revenue from interstate or international telephone calls or other telecommunications, except for mobile telecommunication services, either beginning or ending in Louisiana if the service address charged for the call or telecommunication is located in Louisiana, regardless of where the charges are billed or paid;

(e). revenue from mobile telecommunications service:

(i). revenue from mobile telecommunications services shall be attributed to the place of primary use, which is the residential or primary business street address of the customer;

(ii). if a customer receives multiple services, such as multiple telephone numbers, the place of

primary use of each separate service shall determine where the revenue from that service is attributed;

(iii). revenue from mobile telecommunications services shall be attributed to Louisiana if the place of primary use of the service is Louisiana;

(f). definitions. For the purpose of this Subparagraph, the following terms have the following meanings unless the context clearly indicates otherwise:

(i). *CallX*a specific telecommunications transmission;

(ii). *CustomerX*any person or entity that contracts with a home service provider or the end user of the mobile telecommunications service if the end user is not the person or entity that contracts with the home service provider for mobile telecommunications service;

(iii). *Home Service ProviderX*the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services;

(iv). *Place of Primary Use of Mobile Telecommunications ServiceX*the street address representative of where the customer's use of mobile telecommunications service primarily occurs. This address must be within the licensed service area of the home service provider and must be either the residential or the primary business street address of the customer. The home service provider shall be responsible for obtaining and maintaining the customer's place of primary use as prescribed by R.S. 47:301(14)(i)(ii)(bb)(XI);

(v). *Service AddressX*the address where the telephone equipment is located and to which the telephone number is assigned;

(vi). *TelecommunicationsX*the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through the use of any medium such as wires, cables, satellite, microwave, electromagnetic waves, light waves or any combination of those or similar media now in existence or that might be devised, by telecommunications does not include the information content of any such transmission;

(vii). *Telecommunication ServiceX*providing telecommunications including service provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service;

ii. revenue derived from services, other than from transportation, or telephone, telecommunications, and similar services, shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which the use of personnel is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the property (whether owned by the taxpayer or not) used in rendering the services is located. In the case of services in which personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(a). the ratio that salaries and wages paid to personnel performing such services within Louisiana bear to total salaries and wages for personnel performing such services both within and without Louisiana; and

(b). the ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana;

iii. in any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

A.1.f. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606(A)(1)(e) and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:453 (March 2004), amended LR 31:

#### **Family Impact Statement**

The proposed amendment of LAC 61:I.306 regarding the attribution of revenue from telephone, telecommunications, and other similar services should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be submitted no later than 4:30 p.m., January 27, 2005. A public hearing will be held on January 28, 2005 at 9 a.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges  
Secretary

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Corporation Franchise Tax Allocation of Taxable Capital**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation of this proposed regulation, which updates the corporation franchise tax regulation relating to the

allocation of taxable capital, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be a minimal increase in revenue collections for the state as a result of this proposed regulation.

There should be no effect on revenue collections of local governmental units as result of this proposed regulation.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0412#050

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office